

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shevani Patel	Team: Squad #3	CCRB Case #: 201404505	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/08/2014 7:45 PM	Location of Incident: East 163rd Street and Kelly Street	Precinct: 41	18 Mo. SOL 11/8/2015	EO SOL 11/8/2015	
Date/Time CV Reported Fri, 05/09/2014 8:37 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/09/2014 8:37 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ahsan Zafar	03773	949822	041 PCT
2. SGT Derwent Williams	01719	939693	041 PCT
3. POF Brittany Mcgee	12166	949303	041 PCT
4. SGT Kenan Akaydin	1159	946724	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Derwent Williams	Abuse: Sgt. Derwent Williams searched § 87(2)(b) s car.	
B.SGT Kenan Akaydin	Abuse: Sgt. Kenan Akaydin searched § 87(2)(b) s car.	
C.POM Ahsan Zafar	Abuse: PO Ahsan Zafar searched § 87(2)(b) s car.	
D.POF Brittany Mcgee	Abuse: PO Brittany McGee searched § 87(2)(b) s car.	
E.SGT Derwent Williams	Abuse: Sgt. Derwent Williams seized § 87(2)(b) s car.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 8, 2014, at approximately 7:45 p.m., Sgt. Dervent Williams, Sgt. Kenan Akaydin, PO Ahsan Zafar and PO Brittany McGee of the 41st Precinct searched § 87(2)(b)'s car on the corner of Kelly Street and East 163rd Street in the Bronx (**Allegations A, B, C and D**). Sgt. Williams authorized the seizure of § 87(2)(b)'s car (**Allegation E**). There were no arrests or summonses issued during this incident (complaint encl. 3A-C; CCRB statement encl. 3D-J). § 87(4-b), § 87(2)(g)

Mediation, Civil and Conviction Histories

- At the time of his interview § 87(2)(b) stated that he was planning on filing a lawsuit and did not want to mediate his complaint. As of January 23, 2015, § 87(2)(b) had not filed a Notice of Claim with the City of New York with regard to this incident (encl. 11AA). § 87(2)(b)

Civilian and Officers CCRB Histories

- § 87(2)(b) has been involved in three prior CCRB complaints (encl. 2E).
 - § 87(2)(b)
- Sgt. Dervent Williams has been a member of the NYPD for nine years and has had 13 previous allegations involving four cases with no substantiated allegations. § 87(2)(g)
- Sgt. Kenan Akaydin has been a member of the NYPD for six years. These are the first CCRB allegations made against him (encl. 2B).
- PO Ahsan Zafar has been a member of the NYPD for four years and has had 13 previous allegations involving six cases with two substantiated allegations for a frisk and question in case number 201404505. The NYPD imposed instructions for the frisk allegation and imposed no disciplinary action for the question allegation. § 87(2)(g)
- PO Brittany McGee has been a member of the NYPD for four years, has had eight previous allegations involving five cases with three substantiated allegations. In case number 201100517, a stop allegation was substantiated and the NYPD imposed instructions. In case number 201203485, a stop allegation was substantiated and the NYPD imposed no disciplinary action. In case number 201307133, a search of bag allegation was substantiated and the NYPD imposed instructions (encl. 2D).

Civilian Statements

Complainant/Victim

§ 87(2)(b) (encl. 3D-J)

- At the time of the incident, § 87(2)(b) had previously been gifted a car that was registered to his cousin, § 87(2)(b). The car was legally parked on a residential block on Kelly Street just before East 163rd Street.
- At about 7:45 p.m., he was walking to his apartment at § 87(2)(b) when he saw officers in a barbershop just around the corner from his car. He walked by his car and saw no officers

near it. A few minutes later, § 87(2)(b) s friends came to his apartment to inform him that officers were in his car.

- He went outside and saw 14 to 19 officers in uniform and plainclothes around the car. The trunk, both front doors and glove compartment were open. Officers were searching the car, and also looked underneath and around the tires. § 87(2)(b) did not know how officers gained entry into the car.
- An officer, identified by investigation as Sgt. Williams, told him that his car was under investigation and if he had any questions he was to go to the stationhouse later where the car would be. § 87(2)(b) came soon after and Sgt. Williams told him the same. They were told to leave the premises, but § 87(2)(b) remained and recorded the officers on his phone. He left and came back out at 10 p.m. when he saw officers standing around the car.
- After 12 a.m., a tow truck came and took the car. Six days later, § 87(2)(b) retrieved the car.

Witnesses

- Telephone statements were obtained from five individuals on scene. They all failed to cooperate with the investigation's attempts to obtain sworn statements (encl. 10A-Q).

§ 87(2)(b) (encl. 3K)

- § 87(2)(b) is § 87(2)(b) s cousin. He lent § 87(2)(b) his car earlier that day and received a call from § 87(2)(b) notifying him that officers were searching it.
- When he got there, all of the car's doors were open, but no officers were searching it at the time. § 87(2)(b) told an officer, identified by investigation as Sgt. Williams, that the car was registered under his name. When he was told to go to the stationhouse at midnight, § 87(2)(b) explained that he would be unable to make it.
- Four days later, § 87(2)(b) got the car from the stationhouse where Sgt. Williams explained to him that a suspicious person was standing next to the car with the door open, but provided no more information.

§ 87(2)(b) (encl. 3L-M)

- § 87(2)(b) is § 87(2)(b) s girlfriend. She generally corroborated § 87(2)(b) s statement.
- She believed to have locked all of the doors after she used the car earlier that day. There was only one set of keys to the car, which she had with her through the incident. She did not know how the officers got inside.
- The two front doors and the trunk were open.
- She told the officers that she typically drove the car, but that it was under § 87(2)(b) s name.

§ 87(2)(b) (encl. 3N)

- § 87(2)(b) saw three officers approach § 87(2)(b) s car. § 87(2)(b) was not there prior to see if anyone had been near or in the car. The officers opened all of the doors and the trunk. They looked around all of the seats, the glove compartment, the trunk and the tires (encl. 3N).

§ 87(2)(b) (encl. 3O)

- § 87(2)(b) came outside with § 87(2)(b) Officers were in the car. Either the driver or front passenger's door and the trunk were open.

§ 87(2)(b) (encl. 3P)

- § 87(2)(b) saw two uniformed officers pointing their flashlights at § 87(2)(b) s car. An unmarked car pulled up with three officers who immediately approached the car. One of the

officers opened the front driver's side door and the officers searched around the tires and in the doors.

Additional Witnesses

- As discussed in the NYPD statement section, names of allegedly involved civilians were provided by officers: § 87(2)(b) and § 87(2)(b). The investigation exhausted database searches and contact attempts for them (encl. 10A-Q).

NYPD Statements

Subject Officer: PO AHSAN ZAFAR (encl. 5B-I)

- PO Zafar stated that while in their vehicle, he and PO McGee noticed 50 disorderly people go into a park. They watched from their car about 20 to 30 feet away as the crowd yelled at each other. He heard someone, who he could not see, say that he was going to get a firearm. They watched for about 15 to 20 minutes without ever interacting with the crowd. PO Zafar neither saw anyone physically fighting nor any weapons. No radio runs or 911 calls were made in regards to this group. The officers canvassed the area to ensure nobody was fighting.
- As they drove down Kelly Street, PO Zafar saw three or four individuals, including a man he identified as § 87(2)(b) standing on the driver's side of § 87(2)(b)'s car. He did not see any of them drop anything or open any doors. The group scattered as the officers slowly drove to about two car lengths away. Because there were so many people out, PO Zafar did not know if these people were part of the group at the park, but he assumed were.
- While he did not see anyone drop anything, PO Zafar was suspicious of this because the individuals scattered in different directions after seeing the officers.
- He noticed that the back door on the driver's side, which the group was closest to, was ajar.
- He opened the door and looked on and underneath the backseat. He looked underneath the car and around the tires, as firearms are typically hidden above tires. He looked into the unlocked trunk that after pushing the button to open it. He found no contraband.
- PO Zafar explained that he looked inside of the car because it was his job to secure the vehicle and to make sure that there was no contraband or firearms inside, given the four individuals near the car who had come from a fight where a firearm was mentioned. He believed that the individuals around the car may have tossed the firearm in the car or underneath the car when they noticed the officers.
- He also stated that it was department policy to secure cars (he defined "securing" as notifying the owner) that are not secure, which he clarified to mean open doors or broken glass. To notify the owner, officers must run the license plate. PO Zafar stated that this is unofficial policy, and is not in the Patrol Guide.
- As PO Zafar searched the car for two minutes, Sgt. Williams came by and PO Zafar informed him that the car was not secure and that he saw four individuals around it. Sgt. Williams told PO Zafar that he would check the license plate to see who the car belonged to. Before the officers were able to check, four people approached them, one after the other claiming that it was their car. No one presented the officers with registration or keys. PO Zafar stated that there was no time for the officers to check if there was registration inside of the car or to do a license plate run. He did not want to go through the glove compartment, and by the time they were about to run the license plate by calling the base (because there was no computer in their car), it got too chaotic because a large crowd gathered. It was not safe to be on the phone when the large crowd was becoming unruly.
- Because an owner could not be identified on scene, the car was towed to the stationhouse where PO Zafar conducted an inventory search and vouchered the car and its contents.

Subject Officer: SGT. DERVENT WILLIAMS (encl. 4B-I)

- Sgt. Williams responded to the park after receiving a cell phone call from his team, PO Zafar and PO McGee. Sgt. Akaydin came with him. He heard someone, who he could not see, say, “Go get the gun.” He never exited his car or engaged with the crowd for the two minutes he watched them. People began to disperse in different directions.
- Sgt. Williams and Sgt. Akaydin canvassed the area in their car to deter people from fighting. Aside from them, PO Zafar’s car, no other units were involved. PO Zafar called Sgt. Williams and requested him to go to Kelly Street and East 163rd Street because that people from the park were at the location.
- When they arrived, Sgt. Williams observed numerous people walking away from § 87(2)(b) § 87(2)(b) s car. He did not see what they were doing around the car or where they went from there. He never saw them inside or reaching into the car. PO Zafar and PO McGee told Sgt. Williams that the group was around the car, but dispersed once they stepped out of their car. Sgt. Williams could not recall any additional information they told him.
- The engine was not running. Windows were open, but Sgt. Williams could not recall which or the length they were down. He did not recall if any door was open.
- He added that the officers had knowledge that this car had been used for transporting firearms and drugs, corresponding search warrant for a location (but not the car) a week prior and information provided by a confidential informant. There was no active warrant for the car on the incident date. Sgt. Williams did not recall if this information he received from the confidential informant was documented anywhere. Sgt. Williams believed § 87(2)(b) s car to be the same car because it was the same model, but aside from that, Sgt. Williams stated that he had no other reason to believe it was the same car he received information about.
- Sgt. Williams stated that he had no reason to believe that this car contained any drugs or firearms at the time of the incident.
- Sgt. Williams never opened any car doors or the trunk or entered to search it. He did not recall any search of the car on scene by other officers.
- As the four officers stood around the car, two people, identified by investigation as § 87(2)(b) § 87(2)(b) and § 87(2)(b) approached the officers, asked them why they were near their car and attempted to get inside. The officers asked them for registration and identification, but they were unable to give the officers the correct information. Sgt. Williams also asked if they were able to name personal items that were inside of the car. When asked how the officers knew what was inside of the car, Sgt. Williams explained that they could see inside of the car through the window.
- He wanted to identify the owner because, as a supervisor, he could not allow the car to be unattended with people’s personal items inside. During the interview, Sgt. Williams confirmed that he meant the car to be “unattended” because the windows were down.
- A crowd formed around the officers. People became combative and unruly and were cursing at and threatening the officers. Sgt. Williams called for additional units and about ten officers, who he could not recall, responded. Sgt. Williams was never able to identify the true owner of the car. The car’s license plate was never run because the crowd was too unruly and Sgt. Williams found it important to secure the area for the officers’ safety. Once he determined that no individual on scene could verify ownership with an accurate car registration, he requested a department tow to take the car to the stationhouse. He explained that the car needed to be towed because the officers did not want to leave the car unattended, and were unable to determine the true owner on scene. To safeguard the vehicle the car was towed several hours later.
- Sgt. Williams instructed PO Zafar and PO McGee to conduct an inventory search and prepare property vouchers. Sgt. Williams was able to do a license plate check in the system and

identified the owner of the car. The owner, identified by investigation as § 87(2)(b) arrived with registration papers and his driver's license.

- At no point during the incident was a warrant secured for the car.

Subject Officer: PO BRITTANY MCGEE (encl. 6A-J)

- At the park, PO McGee saw an individual, who she later learned to be named § 87(2)(b) say, "Well wait until I get my gun. Somebody's going to get killed tonight."
- Later on, as PO Zafar and PO McGee were driving very slowly, she observed § 87(2)(b) leaning against the driver's door of § 87(2)(b)'s car with two individuals in the backseat of the car and another standing in the street near the rear passenger's side door. She could not see what they were doing. She did not recall if the interior car lights were on, if the engine was running or if any doors were open at this point. PO McGee heard an individual who she identified as § 87(2)(b) notify the other individuals that the officers were coming.
- § 87(2)(b) grabbed a book bag from the ground underneath the car. The people in the backseat got out and everyone ran in different directions. PO McGee did not see anyone throw anything into the car. § 87(2)(b) ran into a nearby barbershop on East 163rd Street. He was the only person to run in that direction. PO McGee suspected that the group could have thrown a weapon in the car, already had a weapon in there or were stealing from the car. PO McGee went into the barbershop, stopped, frisked and searched § 87(2)(b) but found no weapons.
- PO McGee and PO Zafar walked back to the car. No other officers or civilians were in the area. The rear driver's side car door was fully ajar. Initially during her interview, PO McGee stated that she noticed that all the doors were unlocked. Later during her interview, PO McGee denied ever entering any door, but could not recall how she knew they were unlocked and finally stated that she did not recall if any of the doors were unlocked. When she was presented with the video, she said that when she and PO Zafar first came back to the car the trunk was already open, but not propped up. She did not recall lifting it or seeing other officers open it
- PO McGee and PO Zafar looked underneath the car and into the car with their flashlights to see if anything was broken, if anyone had thrown anything into the car or if it appeared that they had stolen from the car. They did not find any contraband.

Subject Officer: SGT. KENAN AKAYDIN (encl. 8A-K)

- Sgt. Akaydin stated that he and Sgt. Williams were informed by the other officers that the crowd in the park was talking about guns and shootings.
- All four officers entered a barbershop and questioned a group that they followed from the park.
- When they exited and got back into their cars, a group of about six people appeared to notice the officers scattered around both sides of the car. Because the car was in close proximity of the park, he believed it may have been associated with the group. Sgt. Akaydin never saw them in the car. He did not know if he saw them open any doors. The officers approached to investigate a possible firearm left in or around the car as individuals often stash firearms on the top of the wheels, or other areas around the car.
- No doors were open, no windows were down and no lights were on. Sgt. Akaydin looked into of the car with his flashlight for a possible gun, but did not see anything.
- Because he was prompted by the possibility of a gun, he opened either the front or back door on the passenger's side of the car. Because it was unlocked, his suspicion that someone may have put a gun inside of the car was raised. Sgt. Akaydin did not recall if he searched the interior of the car or the extent to which he may have searched the car. He checked the tires

of the cars in front and behind this car. The car was searched on scene. Sgt Akaydin did not know which officers conducted the search or what parts of the car were searched. No firearm was found inside of the vehicle (encl. 7A-E).

Conclusion

Explanation of Subject Officer Identification

- Because Sgt. Williams acknowledged that it was his decision to tow § 87(2)(b)'s car, Allegation E is pleaded against him.

Investigative Findings and Recommendations

Allegations Not Pleaded

- **Discourtesy:** During his phone statement, § 87(2)(b) stated that an officer, identified by the investigation as PO Zafar, told him to “get the fuck out of here.” § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Threat of arrest:** During her phone statement, § 87(2)(b) stated that an officer told her and other individuals, who she could not recall, to go inside unless “they wanted to go to the precinct.” § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Stop, Question, Search:** PO McGee and Sgt. Akaydin testified that they stopped, questioned and searched § 87(2)(b) and individuals. § 87(2)(g)
§ 87(2)(b)

Allegation A – Abuse of Authority: Sgt. Derwent Williams searched § 87(2)(b)'s car.

Allegation B – Abuse of Authority: Sgt. Kenan Akaydin searched § 87(2)(b)'s car.

Allegation C – Abuse of Authority: PO Ahsan Zafar searched § 87(2)(b)'s car.

Allegation D – Abuse of Authority: PO Brittany McGee searched § 87(2)(b)'s car.

Allegation E – Abuse of Authority: Sgt. Derwent Williams seized § 87(2)(b)'s car.

It is undisputed that § 87(2)(b)'s car was towed to the 41st Precinct stationhouse where an inventory search was conducted. It is also undisputed there was no warrant secured for § 87(2)(b)'s car. § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

PO Zafar, Sgt. Williams and PO McGee stated that at the park they heard someone yell that he had a gun, and at no point during the incident, did any officer interviewed see a firearm on anyone's person or in or around the car. PO McGee stated that she eventually stopped the person who made the statement about the gun after seeing him by the car, and after a search, she found no contraband on him. Each officer also described a group of people scatter from around the car (while PO McGee stated two were in the backseat). No officer saw any individual place a firearm or any object into the car. The officers provided conflicting testimony about the whether the doors were open when they approached it, although it is undisputed that the engine was not running.

§ 87(2)(b) provided a video of the incident from his cell phone (detailed transcription encl. 8AA; video in IA 13). The video is 24 minutes and 52 seconds long. The start of the video depicts the passenger's side of § 87(2)(b)'s car with the trunk and the passenger's side door open. Sgt. Williams, PO McGee, PO Zafar and Sgt. Akaydin are standing in the street. The video does not depict officers inside of the car. A few minutes in, several officers respond. The start of the video shows § 87(2)(b) and § 87(2)(b) yelling at the officers, who never engage with them. The last ten minutes of the video show that the few civilians in the area are generally quiet and calm, and the officers are quietly standing around.

PO Zafar prepared property vouchers for the car and the property inside of the car. The remarks section on the car's property voucher notes that on May 9, 2014, the vehicle was being vouchered to determine true ownership. On May 10, 2014, the category was changed to safekeeping because the owner of the vehicle was determined by zfinest. On May 14, 2014, the property was returned to § 87(2)(b) (encl. 8A-K).

An officer is permitted to conduct a warrantless search of a car and its closed containers if he or she has probable cause to believe the car contains contraband, evidence of a crime or a weapon. *People v. Smith*, N.Y. App. Div. 5857 (2012 – 2nd Dept.) (encl. 1A-1B). Patrol Guide Procedure 218-19 classifies four instances in which cars can be seized into police custody: a) arrest evidence, b) investigatory evidence, c) forfeiture proceedings, or d) to determine the true owner (encl. 1C-G).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(4-b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date